

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION**

JENNIFER MANN and ELENi KATZ,
*individually and on behalf of all others
similarly situated,*

Plaintiffs,

v.

BLUE DIAMOND GROWERS,

Defendant.

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: Case No.: 2:24-cv-00114-WSH
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JOINT MOTION TO BIFURCATE BRIEFING SCHEDULE

Pursuant to Rule 1 of the Federal Rules of Civil Procedure, Local Rule 7A of the Local Rules of the United States District Court for the Western District of Pennsylvania (the “Local Rules”), and Sections II.A(3) and II.C. of this Court’s Practices and Procedures, defendant Blue Diamond Growers (“BDG”) and plaintiffs Jennifer Mann and Eleni Katz (“Plaintiffs” and, together with BDG, “the Parties”) jointly move for a bifurcated briefing schedule in which BDG will first move to dismiss or alternatively stay Plaintiffs’ Complaint (ECF No. 1) based on the first-to-file rule before moving to dismiss, if necessary, on other grounds.

1. On January 28, 2024, Plaintiffs filed the Complaint. (ECF No. 1.)
2. On February 16, 2024, pursuant to Local Rule 7E of the Local Rules, the Parties jointly stipulated to extend BDG’s deadline to respond to the Complaint to April 5, 2024 to allow the Parties to meet and confer about the threshold issue of the potential application of the first-filed rule to this Action. (ECF No. 8.)

3. This action is the last of eight actions challenging the labeling of BDG's Smokehouse® Almonds.¹ Two earlier-filed actions, *Clark* and *Rhodes*, are currently pending in Illinois and Alabama.

4. The Parties seek a bifurcated briefing schedule under which BDG would first move to dismiss the Complaint based on the first-to-file rule before moving to dismiss, if necessary, on other grounds to promote judicial economy by enabling this Court to address the threshold issue of the first-filed rule.

5. The Parties, therefore, respectfully request that the Court agree to bifurcated briefing and further enter the following briefing schedule for BDG's motion regarding application of the first-filed rule:

- BDG's motion to dismiss or alternatively stay the Complaint under the first-to-file rule to be filed on **Friday, April 19, 2024**.
- Plaintiffs' opposition brief to be filed on **Friday, May 10, 2024**.
- BDG's reply brief to be filed on **Friday, May 31, 2024**.

6. The Parties will meet-and-confer, if necessary, to set the briefing schedule of a motion to dismiss on other grounds after the Court decides BDG's motion under the first-to-file rule.

7. The requested schedule is made in good faith and not for any improper purpose.

8. As the Parties are jointly seeking this relief, no party will suffer prejudice if the requested schedule is granted.

¹ (1) *Colpitts v. BDG*, No. 20-CV-02487 (S.D.N.Y. filed on Mar. 22, 2020); (2) *Clark v. BDG*, No. 22-CV-01591 (N.D. Ill. filed on Mar. 27, 2022); (3) *Muller v. BDG*, No. 22-CV-00707 (E.D. Mo. filed on May 24, 2022); (4) *Cummings v. BDG*, No. 22-CV-00141 (N.D. Fla. filed on June 24, 2022); (5) *Zapadinsky v. BDG*, No. 23-CV-00231 (E.D. Wis. filed on Feb. 19, 2023); (6) *Wood v. BDG*, No. 23-CV-01363 (D. Md. filed on May 22, 2023); (7) *Rhodes v. BDG*, No. 23-CV-01012 (N.D. Ala. filed on Aug. 1, 2023); (8) *Mann v. BDG*, *Muller v. BDG*, No. 24-CV-00114 (W.D. Pa. filed on Jan. 28, 2024).

9. A proposed Order is filed contemporaneously herewith for the convenience of the Court.

Dated: March 25, 2024

Respectfully submitted,

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*Application for admission *pro hac vice* pending

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